

**Pine Manor Nursing Center and Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 13-RC-16329**

31 May 1984

# DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS

On 13 December 1983 the Regional Director for Region 13 issued a Decision and Direction of Election in which he found, *inter alia*, that charge nurses employed at the Employer's nursing home facility were not supervisors within the meaning of the Act and that the unit sought by the Petitioner, limited to all full-time and regular part-time registered nurses (RNs) and licensed practical nurses (LPNs), was an appropriate unit for bargaining. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, the Employer filed a timely request for review. The Employer contends that the Regional Director erred on substantial factual issues and departed from officially reported Board precedent. Specifically, the Employer alleges, *inter alia*, that the Regional Director erred by not finding the charge nurses to be supervisors within the meaning of Section 2(11) of the Act and by finding that the petitioned-for unit was an appropriate unit for collective bargaining. The Petitioner filed an opposition to the request for review and a motion to strike a portion of the request.

By mailgram dated 20 January 1984 the National Labor Relations Board granted the Employer's request for review with respect to the supervisory status of the Employer's RN and LPN charge nurses. The Board reserved ruling on the Employer's request for review of the unit determination pending resolution of the supervisory issue. In all other respects the request for review was denied. A ruling on the Petitioner's "Motion to Strike a Portion of the Request for Review" was reserved pending the Board's Decision on Review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having considered the entire record in this case, the Board makes the following findings.

The Employer operates a long-term health care center located in Palos Hills, Illinois. The center provides skilled and intermediate level nursing care to infirm and geriatric patients. Licensed by the

State, Pine Manor has 203 beds divided among 4 separate wings. The Employer's operation is headed by Administrator Mary Walker, who is responsible for the overall management of the nursing home and the implementation of the Employer's personnel policies and procedures. The center is divided into five departments: housekeeping, kitchen, maintenance, activities, and nursing; with department heads reporting to Walker. The nursing department is headed by the director of nursing (DON), who is assisted by the assistant director of nursing (ADON).<sup>1</sup>

The center operates 24 hours a day, 7 days a week. The administrator and the DON work 9 a.m. to 5 p.m. Monday through Friday and are "on call" at all other times. The ADON works either the 7 a.m. to 3 p.m. shift or the 1 to 9 p.m. shift. RNs and LPNs work one of three 8-hour shifts; 7 a.m.-3 p.m., 3-11 p.m., or 11 p.m.-7 a.m. on weekdays; and one of two 12-hour shifts, 7 a.m.-7 p.m. or 7 p.m.-7 a.m., when on duty on weekends. The center employs 6 RNs and 14 LPNs in its nursing department. All RNs and LPNs function interchangeably as charge nurses (CNs). The Employer also employs in its nursing department approximately 65-70 aides and orderlies who work as nursing assistants.<sup>2</sup>

Each of the center's 4 wings is staffed at all times with 1 CN and 4 or 5 aides and orderlies, so that there are a total of 4 CNs and 16 to 20 aides and orderlies on duty per shift. The CNs are responsible for the management and maintenance of patient care in accordance with the attending physician's orders and the Employer's policies and procedures. When CNs come on duty, they assign specific aides and orderlies scheduled to their wings by the administrator or DON to particular groups of 12 patients. The CNs spend approximately 20 minutes per shift giving specific instructions to aides, such as assigning responsibility for changing and moving laundry, distributing meals, taking vital signs, bathing patients, and assisting residents to the bathroom. CNs also determine when aides may take their breaks. The primary function of the aides and orderlies is to maintain the patient in a clean, comfortable environment with maximum personal hygiene and adequate nourishment. The aides fulfill these tasks by following the CNs' instructions as

<sup>1</sup> The parties stipulated that the administrator, department heads, DON, and ADON are supervisors within the meaning of the Act.

<sup>2</sup> The aides and orderlies, together with the housekeeping, kitchen, laundry, and maintenance staff employees, are represented by Local 4, Service Employees International Union, AFL-CIO. The Employer also employs five office clerical employees who have no patient care responsibilities and little or no contact with the service and maintenance or nursing employees. The office clerical employees are not represented by a union.

well as by performing tasks identified on each patient's bedside computer printout chart. The CNs do not normally direct the aides in the actual performance of these duties as the aides know what is expected of them. When checking on a patient, the CN notes whether the aide or orderly has performed his or her duties and draws any deficiency in performance to the aide's attention. The CN's job description states that CNs are responsible for the supervision of nursing personnel and the maintenance of quality patient care. It also states that it is the CNs' responsibility to reprimand employees when necessary, either verbally or in writing. Testimony confirmed that the CNs give verbal warnings directly to the aides and orderlies. CNs inform the DON when they think a written warning is warranted. On most occasions the DON does not conduct an independent investigation into the merits of the CNs' recommendations. The record indicates that on at least one occasion the DON has disciplined an employee after the CN made such a recommendation. If the DON and ADON are not on duty, the CN has the authority to send an employee home without pay, but must thereafter report such action to the DON.

CNs do not have the authority to hire, fire, suspend (except as noted above), or lay off employees, as those powers are exercised by the administrator, the DON, and the ADON. The DON and the ADON prepare the general work schedules of aides and orderlies to meet the staffing requirements imposed in the center by the State of Illinois. During normal business hours the office clerical employees are responsible for calling in extra personnel to meet staffing needs. On occasions outside normal business hours when the administrator, DON, and ADON are not on duty, the CNs may call in unscheduled aides and orderlies, grant overtime, and temporarily transfer aides from wing to wing to ensure proper staffing and patient care. CNs also initial timecards of aides and orderlies who are tardy or who the CN has permitted to leave early.

The CNs also are responsible for evaluating the job performance of aides and orderlies following their 60-day probationary period and thereafter on an annual basis. With respect to probationary employees, the CNs evaluate the employees' knowledge of the job, attendance, and ability to perform the assigned work. Finally, the CN recommends whether the employee should be retained or dismissed. The evaluation is then forwarded to the DON who makes her decision based solely on the CN's evaluation and without independent investigation. The annual evaluation of aides and orderlies is made by the CNs to comply with state regulations

and the Employer's policy. The evaluation does not affect the aides' salary or job tenure. However, the Employer awards merit wage increases to its aides and orderlies through a bonus system. Under this program, a CN may recommend an employee for a "star" as a reward for special effort or quality work. When an aide or orderly accumulates 10 "stars," the employee receives a 10-cent increase in his hourly wage. The CNs initiate the granting of stars at their own discretion. While the DON reviews these recommendations, she does not independently investigate the basis for the recommendation.

Based on the foregoing, we find that the Employer's RN and LPN charge nurses are supervisors within the meaning of Section 2(11) of the Act. We particularly note that charge nurses possess authority to issue and in fact have issued verbal disciplinary warnings and have effectively recommended issuing at least one written disciplinary warning; they prepare evaluations of probationary employees and thereby effectively recommend their termination or retention, send employees home without pay for disciplinary reasons, and effectively recommend merit wage increases. These facts establish that the Employer's charge nurses possess and actually exercise supervisory authority requiring the use of independent judgment in matters beyond the mere exercise of patient care responsibilities. *Wedgewood Health Care*, 267 NLRB 525 (1983); *Northwoods Manor*, 260 NLRB 854 (1982). Our finding in this regard is buttressed by the fact that the charge nurses' written job description encompasses the daily supervision of aides and orderlies, and specifically provides that it is the charge nurses' responsibility to issue verbal and written reprimands when appropriate. See *Northwoods Manor*, supra at 855. Lastly, we note that if we were to find that the charge nurses are not supervisors, employees at the Employer's facility would be without onsite supervision during nights and weekends.

Having found that the Employer's RN and LPN charge nurses are statutory supervisors, it follows that the unit of RNs and LPNs sought by the Petitioner is inappropriate. *Northwoods Manor*, supra. Accordingly, we shall dismiss the petition.<sup>3</sup>

#### ORDER

The petition is dismissed.

<sup>3</sup> In view of the result reached herein, we find it unnecessary to consider the Regional Director's finding that the petitioned-for unit is an appropriate unit for collective bargaining. As we have not relied on any material attached to the Employer's request for review which is the subject of Petitioner's motion to strike, we also find it unnecessary to address the issues raised by that motion.